

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal	)	
Service Seeks Comment on Long Term,	)	
Comprehensive High-Cost Universal Service	)	
Reform	)	

To: The Federal-State Joint Board on Universal Service

**COMMENTS OF  
THE NEBRASKA RURAL INDEPENDENT COMPANIES  
AND  
THE SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION**

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## SUMMARY

The Nebraska Rural Independent Telephone Companies and the South Dakota Telecommunications Association, on behalf of its member companies, (jointly referred to as “the Companies”), appreciate the opportunity to offer comments to the Federal-State Joint Board on Universal Service (“Joint Board”) on the critical issue of long-term universal service reform. While it is important that issues such as the growth of the fund be addressed through long-term reform, it is also essential that elements of the current universal service support mechanism that function properly to provide universal service in high-cost rural areas, such as those served by the Companies, be maintained.

The Companies assert that the universal service support mechanism should recognize the differing regulatory requirements placed upon incumbent local exchange carriers (“ILECs”) versus CMRS carriers and some competitive LECs. The Joint Board noted that competitive eligible telecommunications carriers (“ETCs”) may not have the same carrier of last resort (“COLR”) obligations as ILECs; competitive ETCs are not subject to rate regulation; competitive ETCs, unlike ILECs, have no equal access obligations; and incumbent rural LECs’ universal service support is cost-based, while competitive ETCs support is not.

As a result of operating under COLR obligations imposed by state regulatory agencies, ILECs generally incur greater costs because they are required to provide service to all customers where they live and work. Therefore, ILECs should receive a greater amount of support than CETCs.

Because CMRS carriers are not required to provide equal access and do not provide access service, such carriers should not receive support from universal service

mechanisms designed to replace revenue received from access charges prior to access reforms. These mechanisms include Interstate Common Line Support (“ICLS”), Interstate Access Support (“IAS”), and Local Switching Support (“LSS”).

The Companies assert that the identical support rule should be eliminated, as it is not competitively neutral. As discussed above, ILECs are subject to different regulatory requirements than many competitive ETCs. Therefore, in order to be competitively neutral, the universal service mechanism should recognize the differences in regulatory treatment through differences in the amount and type of universal service support provided.

The Companies submit that three factors – COLR status, type of regulation, and costs to serve an area, should be carefully considered prior to changing the universal service support mechanism. The Companies assert that there are some areas of the nation in which any changes in the amount of universal service support distributed would not be justifiable without an alternative mode of cost recovery.

Finally, the Companies submit that while specific aspects of some of the proposals on universal service reform contained in the Notice may have merit, none of the proposals provide an adequate policy blueprint for universal service reform.

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**I. Introduction**

The Nebraska Rural Independent Telephone Companies<sup>1</sup> and the South Dakota Telecommunications Association, on behalf of its member companies,<sup>2</sup> (jointly referred

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<sup>1</sup> Companies submitting these collective comments include: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telco, Inc., Consolidated Telecom, Inc., Consolidated Telephone Company, Curtis Telephone Co., Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K&M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Co., Rock County Telephone Company, Stanton Telephone Co., Inc. and Three River Telco.

<sup>2</sup> SDTA member companies are: Alliance Communications Cooperative, Armour Independent Telephone Company, Beresford Municipal Telephone Company, Bridgewater-Canistota Independent Telephone, Cheyenne River Sioux Tribal Telephone Authority, Faith Municipal Telephone Company, Fort Randall Telephone Company, Golden West Telecommunications Cooperative, Hills Telephone Company, Interstate Telecommunications Cooperative, James Valley Telecommunications, Jefferson Telephone Company d.b.a. Long Lines, Kadoka Telephone Company, Kennebec Telephone Company, McCook Cooperative Telephone Company, Midstate Communications, Inc., Mount Rushmore Telephone Company, PrairieWave Community Telephone, RC Communications, Inc., Roberts County Telephone Cooperative, Santel Communications Cooperative, Inc., Sioux Valley Telephone Company, Splitrock Properties, Inc., Stockholm-Strandburg Telephone Company, Swiftel Communications, Tri-County Telecom, Inc., Union Telephone Company, Valley Telecommunications Cooperative, Venture Communications Cooperative,

to as “the Companies”) respectfully submit these comments in response to the Federal-State Joint Board on Universal Service (“Joint Board”) Public Notice (“Notice”) released on May 1, 2007 in the above-captioned proceeding. In the Notice the Joint Board seeks comments on proposals to achieve long-term, comprehensive universal service reform.

The Companies submit that, while specific aspects of some of the proposals for universal service reform on which comment is sought may have merit, none of the proposals provide an adequate policy blueprint for universal service reform. The Companies recommend that the amount of support paid to ETCs should be differentiated based upon the regulatory duties imposed upon various types of ETCs. Furthermore, the Companies propose that an analysis of three factors – carrier of last resort (“COLR”) status, type of regulation, and costs to serve an area – should be undertaken to determine whether a change in the current mechanism would jeopardize the provision of universal service by carriers in selected service areas prior to recommending any changes to the mechanism.

**II. The Funding of Multiple Carriers Should be Conditioned in Terms of the Carrier’s Regulatory Obligations.**

**A. ILECs, Particularly Rural ILECs, have Unique Legal and Regulatory Obligations Associated with Providing Universal Service not Imposed on CMRS Carriers or Some CLECs.**

The Federal Communications Commission’s (“Commission”) current universal service rules were largely crafted so that the rules did not recognize regulatory differences which existed for different classes of carriers prior to the passage of the Telecommunications Act of 1996 (the “Act”). The Commission generally adopted the

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Vivian Telephone Company, West River Cooperative Telephone Company, West River Telecommunications Cooperative, and Western Telephone Company.

viewpoint that because the universal service principles required “competitive neutrality,”<sup>3</sup> it would treat all eligible telecommunications carriers (“ETCs”) in the same manner, regardless of the differing regulations to which ETCs are subjected by virtue of their size and the type of service they provide. However, as mentioned above, the Joint Board recognized, in its recommendation to place an interim cap on high-cost support only for competitive ETCs, that “[f]undamental differences exist between the regulatory treatment of competitive ETCs and incumbent LECs.”<sup>4</sup> The Joint Board identified different regulatory treatment to include: competitive ETCs may not have the same COLR obligations as incumbent local exchange carriers (“ILECs”); competitive ETCs are not subject to rate regulation; competitive ETCs, unlike ILECs, have no equal access obligations; and incumbent rural LECs’ universal service support is cost-based, while competitive ETCs’ support is not.<sup>5</sup>

State regulators impose significant duties on local exchange carriers in order to ensure availability and quality of service. For example, Nebraska and South Dakota law restrict market exit for all or for part of an exchange market.<sup>6</sup> There surely are comparable exit criteria in many states. Further, Nebraska and South Dakota Rules impose several quality-of-service obligations not imposed on CMRS carriers.<sup>7</sup>

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<sup>3</sup> The Joint Board recommended, and the Commission adopted, the additional principle of “competitive neutrality” in the First Report and Order on Universal Service. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157 (rel. May 8, 1997) (“*Universal Service Order*”) at ¶¶ 47-49.

<sup>4</sup> *See High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 07J-1 (rel. May 1, 2007) (“*Recommended Decision*”) at ¶ 6.

<sup>5</sup> *Ibid.*

<sup>6</sup> Nebraska Revised Statute § 86-134, South Dakota Codified Laws § 49-31-3.1.

<sup>7</sup> Neb. Admin. Code Title 291, Chap. 5 §§ 002.01-002.51 and Admin. Rules of South Dakota, 20:10:33.



Conversely, federal law preempts states commissions from imposing conditions related to entry or obligations ensuring the universal availability of telecommunications services at affordable price levels on CMRS carriers. These “unequal” requirements impose regulatory costs associated with social policy goals that are not incurred by CMRS carriers or some CLECs.

**B. Different COLR Obligations Should be Recognized Through Different Levels of Support.**

CETCs are subject to the “reasonable request” standard to provide service to new customers. The reasonable request standard requires that ETCs which receive a request for service from a potential customer within the applicant’s licensed service area but outside its existing network coverage to provide service within a reasonable period of time *if service can be provided at reasonable cost* by: 1) modifying or replacing the requesting customer’s equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier’s facilities to provide service; or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment.<sup>8</sup> An ETC applicant is required to report unfulfilled requests to the Commission (in instances in which the Commission has granted the carrier ETC designation) within 30 days after making a determination that it cannot serve a potential customer using one or more of these methods. However, short of revoking a carrier’s ETC designation, the Commission (or states, in instances in which a state has granted

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<sup>8</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46 (rel. Mar. 17, 2005) at ¶ 22.

ETC designation) has no remedy to force a competitive ETC which claims that it is too costly to provide service to a potential customer to do so.

Many ILECs, however, including those in Nebraska and South Dakota, face additional regulations that have either directly or indirectly required the assumption of COLR obligations. State utility commissions in Nebraska and South Dakota have historically been involved in the actual establishment of ILEC service territories and also in determining the specific local exchange areas that are served by ILECs under the commission's jurisdiction. The commissions have also issued certificates of public convenience and necessity to the ILECs. Certificated ILECs have been subject to more demanding requirements that obligate the ILECs to serve all customers where they live and work. Furthermore, many rural ILECs continue to be rate regulated at the state level, and these ratemaking powers, in conjunction with rate regulation existing at the federal level, impose on rural ILECs a requirement to meet COLR obligations. For example, the ILECs in South Dakota are rate-of-return regulated for intrastate access services. Under state statute, the South Dakota Public Utilities Commission ("PUC") is required to determine and consider specific factors in setting a fair and reasonable price for switched access service. The ILECs in South Dakota have through the years been given a clear indication that in exchange for the establishment of fair and reasonable access rates, they are required to provide nondiscriminatory service and universal service. Pursuant to SDCL § 49-31-18, the South Dakota PUC is specifically directed to consider universal service in establishing its methods for determining fair and reasonable access rates. As a result, pursuant to different and additional regulation, the ILECs in South Dakota have taken on increased service obligations and assumed the status of COLR.

As actual COLRs, the ILECs incur significant additional costs in offering service to serve all customers where they live and work, including the highest-cost, most-remotely-located customers. CETCs, unlike ILECs, do not face these regulations, and as a result avoid the additional costs of offering service to all customers where they live and work. The Companies assert that the provision of service to subscribers at the premises where these subscribers work and live is true “universal service.”

Due to the differences in regulatory requirements regarding the offering of service to otherwise-unserved customers, ILECs incur greater costs because they offer service to a greater number of customers, especially that are most costly to serve. Customer density statistics and the relationship between costs and density illustrate the high costs incurred by rural ILECs to provide service to all customers within their service areas. For example, rural ILECs in South Dakota serve an average of 2.17 access lines per square mile served,<sup>9</sup> and rural ILECs in Nebraska serve an average of 3.47 access lines per square mile served.<sup>10</sup> The Nebraska Public Service Commission, in establishing a permanent state universal service support mechanism, has found that density is the most significant factor in estimating loop costs.<sup>11</sup> Therefore, it is appropriate that ILECs

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<sup>9</sup> See *Developing a Unified Intercarrier Compensation Regime, The Missoula Intercarrier Compensation Reform Plan*, CC Docket No. 01-92, DA 06-1510, Comments of The South Dakota Telecommunications Association (filed Oct. 25, 2006) at p. 11.

<sup>10</sup> Developed using data on the square miles served by rural ILECs from the Nebraska Public Service Commission’s NUSF-50 Model available at: [http://www.psc.state.ne.us/home/NPSC/usf/Year3\\_NUSF\\_26\\_Distribution\\_PUBLIC.xls](http://www.psc.state.ne.us/home/NPSC/usf/Year3_NUSF_26_Distribution_PUBLIC.xls) and data on the number of access lines served by rural ILECs from the Nebraska Public Service Commission, 2006 Annual Report on Telecommunications, September 30, 2006, at pp. 1-2, available at: <http://www.psc.state.ne.us/home/NPSC/communication/AnnualReport2006.pdf>.

<sup>11</sup> See *The Nebraska Public Service Commission, on its Own Motion, Seeking to Establish a Long-Term Universal Service Funding Mechanism*, Application No. NUSF-26, Findings and Conclusions (entered Nov. 3, 2004) at ¶ 58. The Staff found that 78 percent of the variation in loop costs could be explained by density.

should receive adequate support to serve a given area in recognition of the difference in costs due to the ILECs' obligation to provide service on a COLR basis.

AT&T, in its proposal for short-term stabilization of the fund, stressed that a core goal of long-term universal service reform should be "ensuring that *one* provider offers affordable, high-quality service in *high-cost* areas that are otherwise unable to support such service. . . ."<sup>12</sup> The Companies agree that universal service funding is a scarce resource that should be allocated to provide high-quality service in high-cost areas. While the Companies have asserted throughout this section that high-cost universal service support amounts should be differentiated based upon differing COLR obligations, the Companies also submit that, over the long-term, it may be necessary to protect the long-term sustainability of the fund by limiting high-cost universal service support to one COLR per service area.

Certainly, the vast majority of consumers subscribe to both wireline and wireless service. This would indicate that these services have become complementary. The two services offer different features and functions, and many consumers find these features and functions to be valuable. Consumers likely subscribe to wireless service primarily because it offers mobility. If the Commission concludes that it should retain separate funding sources for both wireline and wireless providers in each service area, in order to target scarce universal service resources appropriately, at a minimum it should adopt changes that will target universal service support for wireless carriers to areas that are currently unserved by wireless carriers in order to encourage network build-out. Wireless

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<sup>12</sup> See Letter from Ms. Mary L. Henze, Senior Director, Federal Regulatory, AT&T, to Ms. Marlene Dortch, Secretary, FCC, WC Docket No. 05-337, CC Docket No. 96-45 (filed March 22, 2007) Attachment ("AT&T Proposal") at p. 7 (emphasis in original).

carriers have constructed their networks in areas with the greatest profitability and in key strategic areas to develop a geographic footprint relative to their competitors. Therefore, it may be necessary to provide universal service support in order to provide incentives to provide wireless service in more remote and sparsely populated areas that are most costly to serve. Furthermore, the Commission should only support one wireless carrier per service area in order to efficiently use scarce universal service resources. Attempting to support multiple carriers in areas in which mobile service is not currently offered would only exacerbate the growth pressure on the fund and ultimately make it unsustainable.

**C. Different Obligations to Provide Access to a Carrier's Network, Including Equal Access Obligations, Should be Recognized Through Different Levels of Support.**

ILECs have been required to provide equal access to interexchange service, and this obligation was continued in the Act.<sup>13</sup> CMRS carriers are not required to provide equal access to interexchange service. Furthermore, CMRS carriers are not prohibited from charging terminating access charges, but CMRS carriers must establish a contractual obligation on the part of interexchange carriers to do so.<sup>14</sup> However, since the advent of commercial wireless service, and continuing today, CMRS carriers have charged their end users both to make and to receive calls.<sup>15</sup> Therefore, ILECs have been required to allow interexchange service providers equal access to the ILEC's customers and have in turn been compensated through the payment of access charges for the use of the ILEC network. Conversely, CMRS carriers have not been required to offer

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<sup>13</sup> See 47 U.S.C. § 251(b)(3).

<sup>14</sup> See *Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, Declaratory Ruling, FCC 02-203 (rel. July 3, 2002) at ¶ 12.

<sup>15</sup> Id. at ¶ 14.

interexchange service providers equal access and have been compensated for the use of the CMRS carriers' network through payments from end-user subscribers. This difference in obligations is especially significant given that the Commission has established three high-cost universal service support mechanisms – Interstate Common Line Support (“ICLS”), Interstate Access Support (“IAS”), and Local Switching Support (“LSS”) – to replace cost recovery that had previously taken place through access rates. As AT&T indicated in its interim universal service reform proposal, carriers that have not suffered harm from the Commission's access charge reform should not reap a universal service windfall from relief designed to minimize the impact of access reform.<sup>16</sup> The Companies concur with AT&T on this point, and suggest that universal service support mechanisms designed to replace access charges should not be ported to carriers that do not offer access services. ILECs, as local exchange carriers, are also required to provide access to their networks on a wholesale basis for use by other carriers, including CMRS carriers. CMRS carriers frequently use ILEC networks to provide transport for wireless services. Therefore, it is especially important that ILECs receive sufficient support in order to maintain their *networks*, as their networks not only provide universal service, but allow other carriers to provide service as well.

**D. Cost-Based Support Should be Continued for ILECs and the Identical Support Rule Should be Eliminated.**

The Joint Board seeks comment on whether the Commission should replace the current identical support rule with a requirement that competitive ETCs demonstrate their own costs in order to receive support.<sup>17</sup> The cost-based support received by ILECs today

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<sup>16</sup> See *AT&T Proposal* at p. 11.

<sup>17</sup> See *Notice* at ¶ 7.

is based upon the costs associated with ILEC obligations discussed above. It is essential that ILECs receive cost-based support in order to fulfill their regulatory obligations. However, CETCs do not have the same regulatory obligations as ILECs, resulting in lower costs to provide service. Therefore, the identical support rule should be discontinued.

The Joint Board also seeks comment on whether modification of the identical support rule would be consistent with the principle of competitive neutrality. The principle of competitive neutrality as adopted by the Commission states:

Universal service support mechanisms and rules should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.

The Companies assert that the identical support rule does not recognize the differences in regulatory treatment between competitive ETCs and ILECs recognized by the Joint Board;<sup>18</sup> therefore, it is necessary to eliminate the identical support rule in order to maintain competitive neutrality. Furthermore, the identical support rule is not competitively neutral because wire line carriers typically receive support for about one subscription per household, while in many cases three or even four wireless lines are being supported in the same household.<sup>19</sup> The high-cost universal service support mechanism does not exist in a vacuum. Rather, in order for it to function properly, it must take into account the regulations and associated costs to which different types of carriers are subject.

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<sup>18</sup> Id. at ¶ 6.

<sup>19</sup> See *AT&T Proposal* at p. 2.

**III. Prior to Adopting Any Reforms, the Commission Should First Determine What Market Conditions May Justify a Change in Distribution of Universal Service Support.**

**A. In Addition to Recognizing the Differences Between ILEC and CETC Obligations in the Amount of Support Provided, It is Necessary to Establish Specific Test Conditions for Justifying Possible Shifts in Support.**

The Joint Board seeks comment on various proposals for potentially modifying high-cost reform – reverse auctions, use of GIS technology, network cost modeling and inclusion of broadband as a supported service.<sup>20</sup> Each of these proposals, or others that commenting parties may submit, appears to carry with it a presumption that changes to high-cost support mechanisms are appropriate in all areas of the country. The Companies strongly believe that there are fundamental conditions that must be taken into account before any shift in universal service distribution methodology is undertaken for a company.

First and foremost, as noted earlier in these Comments, a provider that has carrier-of-last-resort obligations is held to a higher standard of service that, particularly in very rural service areas, must be given considerable weight as to the impact on consumers prior to a possible shift in support distribution. Second, whether a carrier is subject to rate-of-return regulation, price cap regulation or no earnings regulation whatsoever (as is the case for competitive eligible telecommunications carriers) is of utmost relevance in determining the role that universal service support plays in that carrier recovering its costs. Third, the inherent cost characteristics of a study area should be carefully considered. Taken in combination, these three factors – carrier of last resort status, type of regulation, and costs in an area – lead to an obvious conclusion that there are some

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<sup>20</sup> See generally Notice at pp. 2-5.



areas of the nation in which any changes in universal service distribution would not be justifiable without an alternative mode of cost recovery. Such a mode would appear very unlikely given the growth in universal service funding that has led to the very opening of this rulemaking by the Joint Board.

The Companies would direct the Joint Board's attention to the analysis of one of its members, Billy Jack Gregg, director of the Consumer Advocate Division of the Public Service Commission of West Virginia. Mr. Gregg proposed that states should consider utilizing a per-line support benchmark in making public interest determinations for ETC applications in rural study areas.<sup>21</sup> Any rural study area with per-line support above that of the highest non-rural carrier study area, Mr. Gregg reasoned, "should be presumed to be so costly to serve that it doesn't make any sense to have an additional subsidized carrier."<sup>22</sup> While the Companies do not endorse use of this specific benchmark in the Joint Board's consideration of changes to universal service distributions, they do believe the proposal is instructive as a concept to be considered along with other factors in determining whether a study area may be a candidate for such changes.

For example, it would be sound public policy to acknowledge that rural ILECs serving higher-cost study areas, as demonstrated by the amount of universal service support they receive, cannot maintain comparable and affordable service if that support were to be reduced. Furthermore, that carrier's universal service support is even more crucial if the company is a carrier of last resort, as that designation connotes an obligation

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<sup>21</sup> See "The Use of Per Line Support Benchmarks to Guide State Public Interest Determinations When Designating Eligible Telecommunications Carriers in Areas Served by Rural Carriers," written by Billy Jack Gregg, Director, Consumer Advocate Division, Public Service Commission of West Virginia, at pp. 6-9.

<sup>22</sup> Id. at p. 8.

to serve rural customers that is fulfilled by no other carrier. In addition, this support is an indisputable component of a company's cost recovery if the company is subject to rate-of-return regulation, as are most rural ILECs. Thus, the company will not be able to recover the costs of its regulated investments and expenses if its support is reduced without some offsetting recovery mechanism.<sup>23</sup> The Companies posit that this trio of conditions – a study area's costs, carrier-of-last-resort status and regulatory status – in combination is a legitimate test to apply in considering whether any new universal service paradigm for rural ILECs that the Joint Board may consider is possibly in order. For rate-of-return companies that are carriers of last resort and rely on universal service support to a significant extent, clearly this test cannot justify such a paradigm shift at this time. For carriers that fall elsewhere on the spectrum, more analysis may be done to determine if another distribution system is reasonable.

**B. Additional Incentives Will Likely be Necessary to Achieve Ubiquitous Broadband Deployment**

The Joint Board also requests comments on whether broadband should be added to the list of supported services and, if so, whether it should be targeted to areas without broadband availability.<sup>24</sup> As a threshold matter, the Joint Board should understand that “broadband” in and of itself is not a service and therefore cannot be added to the list of supported services. Also, if a service that has a broadband transmission component is to be added to the list of support services, it must meet the statutory requirements of Section 254(c)(1) of the Act. Section 254(c)(1) of the Act requires that a service is classified as a

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<sup>23</sup> The Companies would note that in fact the FCC's cap on the High Cost Loop Fund has already resulted in under-recovery of costs for rural companies as overall cost demands on this capped fund have caused a significant reduction year over year for individual companies.

<sup>24</sup> See Notice at ¶8.

telecommunications service and that such a service has been subscribed to by a majority of residential customers in order to be added to the list of supported services.<sup>25</sup> A reasonable inclusion to the list of supported services would be a generally available telecommunications service offering associated with broadband access to the Internet. That being said, the Companies applaud the Joint Board and Commission for undertaking this important linkage between universal service support and the nation's long-declared goal of universal broadband availability.<sup>26</sup>

However, prior to possibly expanding the definition of universal service to explicitly include broadband access, it is critical for policymakers to grasp the magnitude of such an undertaking. Of course, deploying a broadband-capable network is particularly costly in sparsely populated areas such as much of Nebraska and South Dakota. While the current universal service mechanisms provide some cost recovery for a broadband-capable network, the cap on the federal high-cost loop ("HCL") fund has limited full recovery of ILEC loop costs. In 2007, more than \$750 million in loop costs will not be recovered because of the HCL fund cap, and that shortfall has increased dramatically each year since the Commission capped the fund by freezing the national average loop cost at \$240.<sup>27</sup> Properly conditioned loop infrastructure is obviously necessary if high-speed Internet access is to be delivered by wireline service providers in rural areas. Thus, if ubiquitous broadband deployment is to be adopted as a universal

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<sup>25</sup> 47 U.S.C. § 254(c)(1).

<sup>26</sup> See Promoting Innovation and Competitiveness: President Bush's Technology Agenda – A New Generation of American Innovation, available at: [http://www.whitehouse.gov/infocus/technology/economic\\_policy200404?chap4.html](http://www.whitehouse.gov/infocus/technology/economic_policy200404?chap4.html).

<sup>27</sup> See Appendix H, National Exchange Carrier Association's 2006 Annual USF Data Submission to the FCC and USAC.

service goal, it would appear inevitable that additional incentives – such as removing the HCL cap in order to ensure loop costs are fully recovered – need to be considered.

Given the high cost of providing broadband access in sparsely populated areas, the Companies propose that it would seem appropriate that funding for broadband access will need to be targeted to one carrier per serving area. Consistent with COLR requirements for voice-grade service recommended in these Comments, the expansion of the supported services to include a broadband transmission component would also need to include a requirement that the COLR obligation extend to provisioning broadband-capable network throughout a given area. But such an obligation cannot occur until: (1) the additional service offering that includes broadband transmission capability is defined; (2) costs of provisioning the defined broadband transmission service in high-cost areas are accounted for and realistically funded; (3) a schedule for transitioning from today's system to a broadband transmission service-based USF system is established; and (4) reasonable goals for deployment of the broadband transmission service in the most-remote areas are determined.

**IV. While Specific Aspects of Some of the Proposals on Universal Service Reform Contained in the Notice May Have Merit, None of the Proposals Provide an Adequate Policy Blueprint for Universal Service Reform.**

**A. A Reverse Auction Mechanism Such as That Proposed by Verizon May Lead to Service Quality Problems and Greater Administrative Costs, and Will Not Encourage Gradual Increases in the Deployment of a Broadband-Capable Network.**

The Joint Board seeks comment on specific auction proposals that had previously been filed in this proceeding, including Verizon's auction proposal.<sup>28</sup> While the Verizon proposal might reduce the total amount of universal service support distributed (unlike

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<sup>28</sup> See Notice at ¶ 4.

the CTIA proposal as discussed below), it may lead to service quality problems and greater administrative costs, and will not encourage gradual increases in the deployment of a broadband-capable network.

Verizon proposes that the Commission, in cooperation with the states, would develop a statement that would define the winning bidder's obligations that would serve as a request for quote ("RFQ").<sup>29</sup> Central to the definition of the winning bidder's obligation would be the definition of universal service, which will need to be specific in terms of service quality, coverage, and capabilities. The Companies assert that the definition of supported services contained in 47 C.F.R. § 54.101 is not sufficient, contrary to the suggestion of CTIA.<sup>30</sup> The service definition will need to specify the appropriate service quality standards (e.g., system reliability standards for dial tone, blockage, and transmission noise and distortion) and any other capabilities. For example, will internet access be supported and, if so, what speeds will be established and will those speeds differ in rural areas? Setting service quality standards below those that are applied to ILECs will put such carriers at a disadvantage in an auction. This is due to the fact that ILECs will be required to provide service at regulated levels of quality, but may not be able to include all costs associated with providing a given quality of service in order to submit a low bid and receive support. Furthermore, any specifications for service quality standards that are lower than the quality of service offered today will almost certainly

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<sup>29</sup> See Letter from Kathleen Grillo, Vice President Federal Regulatory, Verizon, to Debroah Taylor Tate, Federal Chair, and Ray Baum, State Chair, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45 (dated Feb. 9, 2007) Attachment at p. 5.

<sup>30</sup> See *Federal-State Joint Board on Universal Service Seeking Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45, Reply Comment of CTIA – The Wireless Association, Appendix (Controlling Universal Service Funding and Promoting Competition Through Reverse Auctions, by James Stegeman, Dr. Steve Parsons, Robert Frieden, and Mike Wilson) (filed Nov. 8, 2006) ("CTIA Reply Comments") at p. 24.

result in consumers receiving a lower quality of service than they do today. For example, in seeking comment on an alternative regulation plan for ROR carriers, the Commission stated “[t]he design of an alternative regulation plan must also address the incentives an alternative regulation plan gives rate-of-return carriers to reduce investment in plant and equipment, or to *reduce expenditures on maintaining service quality*, in order to increase profits at the expense of maintaining adequate investment or service quality.”<sup>31</sup> Carriers will not reduce expenditures to maintain service quality in order to increase profits under a reverse auction system; rather, carriers will be forced to reduce such expenditures in order to attempt to win a bid in an attempt to maintain existing profits. The pressure to reduce expenditures to maintain service quality will necessitate increased service quality monitoring by regulatory agencies in order to maintain sufficient service quality and to ensure that winning bidders are fulfilling the terms of their contracts.

An auction mechanism as proposed by Verizon will also stifle the gradual deployment of a broadband-capable network that is occurring under the current universal service support mechanism. Due to the fact that high-cost loop support is available to rural carriers “to maintain existing facilities and make prudent facility upgrades,”<sup>32</sup> the

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<sup>31</sup> See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, FCC 01-304 (rel. Nov. 8, 2001) (“*MAG Order*”) at ¶ 223.

<sup>32</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, FCC 01-157 (rel. May 23, 2001) (“*RTF Order*”) at ¶ 200, citing the *Universal Service Order*.

Commission has found that “our policies do not impede the deployment of modern plant capable of providing access to advanced services.”<sup>33</sup> Therefore, as rural carriers replace and upgrade their plant, they are able to gradually deploy a network capable of accessing advanced services and to receive universal service support for such a network. However, under a reverse auction support mechanism, there will be no incentives to offer a network that can handle data at speeds greater than the specification provided in the RFQ. Furthermore, because the period for which an auction franchise is awarded will need to be relatively long in order to allow a carrier to recover a substantial portion of its investment over the franchise period, the speeds at which a network is capable of handling data will remain static over that same period. This is due to the fact that a carrier will likely not make additional investments over the franchise period in order to maintain profitability. Therefore, an auction mechanism to award universal service support would likely eliminate the gradual deployment of a broadband-capable network in rural areas that has occurred under the current mechanism, which has benefited consumers in rural areas, as evidenced by the gradually increasing levels of deployment of broadband services in sparsely-populated areas.<sup>34</sup>

**B. CTIA’s Auction Proposal Would Not Control the Growth in the USF, Which is One of the Driving Factors for Universal Service Reform.**

The Joint Board seeks comment on specific auction proposals that had previously been filed in this proceeding, including the auction proposal of CTIA.<sup>35</sup> In addition to the

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<sup>33</sup> Ibid.

<sup>34</sup> See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *High-Speed Services for Internet Access: Status as of June 30, 2006* (rel. Jan. 31, 2007) at Table 18.

<sup>35</sup> See Notice at ¶ 4.

problems associated with a reverse auction mechanism to distribute universal service support discussed above, CTIA's auction proposal would fail to control growth in the fund.

CTIA proposes that instead of a "Winner Takes All" mechanism for reverse auctions, in which carrier is awarded support for a designated support area, the Commission should adopt a "Winner-Takes-More" system, in which all carriers meeting the specifications in the RFQ would receive support.<sup>36</sup> In a "Winner-Takes-More" system, the carriers that did not submit the lowest bid would simply receive a lower percentage of distribution than the winner.

While CTIA may argue that the amount of per-line support could be reduced by using a reverse auction mechanism for both the winning bidder and other bidders, the CTIA proposal does not address the continuing growth in CETCs, which is the primary contributor to fund growth at this time.<sup>37</sup> Since the winning bidder does not win the right to be the only CETC receiving support for a given service area, there is no incentive to keep the bid price down. In fact, this type of auction would provide incentives for all bidders to bid higher than necessary, because all bidders would reap the reward of support amounts established by higher than necessary bids. CTIA asserts that awarding exclusive universal service funding in a "Winner Takes All" mechanism is inconsistent with the provisions of the Act that require the removal of entry barriers to local telecommunications markets.<sup>38</sup> The Companies note that the Act removed exclusive

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<sup>36</sup> See *CTIA Reply Comments*, at pp. 19-22.

<sup>37</sup> See Federal-State Joint Board on Universal Service En Banc Meeting, Washington, DC, February 20, 2007 Opening Remarks of Chairman Kevin Martin at pp.4-5, available at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-271011A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-271011A1.pdf)

<sup>38</sup> *Id.* at p. 20.



franchise protection, in that carriers no longer have the ability to operate in a market with the assurance that other carriers cannot provide service within a given franchise.

However, the payment of universal service support to one provider per service area would not constitute a barrier to entry to be eliminated under the Act. In fact, floor debate on the Act emphasized that some areas of the country could not support competition, as the costs of providing service are so great that even one carrier needs universal service support in order to offer quality and affordable service. Therefore, the Joint Board should not recommend the CTIA proposal to the Commission as a mechanism for long-term universal service reform, as the CTIA proposal will fail to control growth in the fund, which is a central issue that universal service reform must address.

**C. Embarq's Proposal to Calculate Support at the Sub-Wire Center May Have Some Merit; However, The Proposal Does Not Address Issues Such as Fund Growth, and Needs Additional Development.**

The Joint Board seeks comment on how network cost models could be used to more efficiently calculate and target support at more granular levels.<sup>39</sup> Specifically, the Joint Board indicates that Embarq has proposed that support should be calculated at the sub-wire center level.<sup>40</sup>

The Companies submit that, at a conceptual level, different portions of a wire center may have substantially different costs to serve. These differences are often associated with customer density, but other factors including terrain may affect costs.

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<sup>39</sup> See Notice at ¶ 5.

<sup>40</sup> Ibid.

While the Companies agree that there are likely substantial cost differences to provide service within a single wire center, the Companies believe that a much more concrete proposal must be developed before support can be offered for the concept. For example, the non-rural high-cost universal service support mechanism currently computes and distributes support based upon a proxy model system. This mechanism may be more amenable to computation of costs on a sub-wire center level. However, the rural high-cost universal service support mechanism is currently based on embedded costs. Embedded cost records are typically not maintained at a sub-wire center level. Therefore, the current rural high-cost support mechanism cannot be easily converted to compute costs on a sub-wire center level. Furthermore, because the Rural Task Force found that the Synthesis Model used by the Commission to compute non-rural high-cost universal service support did not accurately predict costs for rural carriers,<sup>41</sup> the Companies assert that a further review of proxy models would be necessary before such models should be used to compute support for rural carriers.

In addition, while Embarq's proposal that high-cost universal service support should be computed at the sub-wire center level may be worthy of additional study, the Companies note that Embarq has presented its proposal as addressing a different issue than whether there should be more than one ETC supported per area, or whether the Commission should continue to use the identical support rule.<sup>42</sup> Therefore, Embarq's

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<sup>41</sup> See *The Rural Difference*, Rural Task Force White Paper 2, January 2000, at p. 18.

<sup>42</sup> See Letter from Jeffrey S. Lanning, Director – Federal Regulatory, Embarq, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 05-337 (filed Feb. 20, 2007) (attaching slide presentation) at slide 7.

proposal in and of itself will not address issues such as the growth of the fund, and other reforms to the high-cost universal service support mechanisms will still be necessary.

**D. Rural Carriers That Have Not Disaggregated Universal Service Support Should Not be Required to Do So.**

The Joint Board indicates that the overwhelming majority of rural telephone companies chose not to disaggregate support.<sup>43</sup> The Joint Board requests comment on whether the Commission should require rural carriers to disaggregate under Paths Two or Three and eliminate the option not to disaggregate under Path One.<sup>44</sup>

The Companies assert that the Commission should not eliminate the option to not disaggregate under Path One. While the targeting of high-cost universal service support based upon the cost of serving sub-wire center areas as discussed above may be desirable, requiring rural companies to disaggregate their high-cost support would impose additional burdens on companies that have not chosen to disaggregate their support. In addition, the mere targeting of support to areas that are the most costly to serve will not address issues such as the growth in the universal service fund. In fact, without stringent auditing, it may be possible for CETCs to report more subscribers in high-cost zones than they serve, so as to increase the amount of universal service support such carriers receive. Furthermore, as discussed above, the Companies submit that given the different regulatory requirements, including COLR obligations, under which rural ILECs operate, the identical support rule is inappropriate and should be discontinued. If the identical support rule is eliminated, there is no need to disaggregate support.

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<sup>43</sup> See Notice at ¶ 6.

<sup>44</sup> Ibid.

## **V. Conclusion**

The Companies appreciate the opportunity to offer comments to the Joint Board on the critical issue of long-term universal service reform. The Companies recommend that long-term universal service reform should recognize different regulatory treatment of ILECs through the payment of different support amounts. In other words, the identical support rule should be eliminated.

The Companies submit that three factors – COLR status, type of regulation, and costs to serve an area – should be carefully considered prior to changing the universal service support mechanism. The Companies assert that there are some areas of the nation in which any changes in the amount of universal service support distributed would not be justifiable without an alternative mode of cost recovery.

Respectfully submitted,

### **THE NEBRASKA RURAL INDEPENDENT COMPANIES:**

Arlington Telephone Company,  
The Blair Telephone Company,  
Cambridge Telephone Company,  
Clarks Telecommunications Co.,  
Consolidated Telco Inc.,  
Consolidated Telecom, Inc.,  
Consolidated Telephone Company,  
Curtis Telephone Company,  
Eastern Nebraska Telephone Company,  
Great Plains Communications, Inc.,  
Hartington Telecommunications Co., Inc,  
Hershey Cooperative Telephone Company, Inc.,  
K&M Telephone Company, Inc.,  
The Nebraska Central Telephone Company,  
Northeast Nebraska Telephone Company,  
Rock County Telephone Company,  
Stanton Telecom Inc., and  
Three River Telco

And

**THE SOUTH DAKOTA  
TELECOMMUNICATIONS ASSOCIATION:**

Member companies are: Alliance Communications Cooperative, Armour Independent Telephone Company, Beresford Municipal Telephone Company, Bridgewater-Canistota Independent Telephone, Cheyenne River Sioux Tribal Telephone Authority, Faith Municipal Telephone Company, Fort Randall Telephone Company, Golden West Telecommunications Cooperative, Hills Telephone Company, Interstate Telecommunications Cooperative, James Valley Telecommunications, Jefferson Telephone Company d.b.a. Long Lines, Kadoka Telephone Company, Kennebec Telephone Company, McCook Cooperative Telephone Company, Midstate Communications, Inc., Mount Rushmore Telephone Company, PrairieWave Community Telephone, RC Communications, Inc., Roberts County Telephone Cooperative, Santel Communications Cooperative, Inc., Sioux Valley Telephone Company, Splitrock Properties, Inc., Stockholm-Strandburg Telephone Company, Swiftel Communications, Tri-County Telecom, Inc., Union Telephone Company, Valley Telecommunications Cooperative, Venture Communications Cooperative, Vivian Telephone Company, West River Cooperative Telephone Company, West River Telecommunications Cooperative, and Western Telephone Company.

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